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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JOAN G. LOZOYA Plaintiff, v. ERIC J. ANDERSON, M.D.; LINDSEY BLAKE, M.D.; HOSPITAL CORPORATION OF AMERICA INC.; MOUNTAINVIEW HOSPITAL; FREEMONT EMERGENCY SERVICE, INC.; ALEXANDRA M. PAGE, M.D.; KAISER FOUNDATION HEALTH PLAN, INC.; KAISER PERMANENTE and DOES 1 through 30, inclusive Defendants.	CASE NO. 07 CV 2148IEG (WMC) **DEFENDANTS HOSPITAL CORPORATION OF AMERICA AND MOUNTAINVIEW HOSPITAL'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** DEPT.: Court Room 1 Judge: Irma E. Gonzalez Magistrate: William McCurine, Jr. DATE OF FILING ACTION: 11/08/07

COME NOW Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL, and for themselves alone and no other defendant, responds to Plaintiff's Second Amended Complaint for damages (hereinafter Complaint) as follows in accordance with the numbered paragraphs thereof:

1. Answering this paragraph of the complaint, Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph and on

that basis, denies each and every allegation contained therein.

2. Answering this paragraph of the complaint, Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph and on that basis, denies each and every allegation contained therein.

3. Answering this paragraph of the complaint, Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph and on that basis, denies each and every allegation contained therein.

4. Answering this paragraph of the complaint, Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph and on that basis, denies each and every allegation contained therein.

5. Answering this paragraph of the complaint, Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph and on that basis, denies each and every allegation contained therein.

6. Answering this paragraph of the complaint, Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph and on that basis, denies each and every allegation contained therein.

7. Answering this paragraph of the complaint, Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph and on that basis, denies each and every allegation contained therein.

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16. Answering this paragraph of the complaint, Defendants HEALTH CORPORATION OF

AMERICA, INC. AND MOUNTAINVIEW HOSPITAL are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph and on that basis, denies each and every allegation contained therein.

17. Answering this paragraph of the complaint, Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph and on that basis, denies each and every allegation contained therein.

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FIRST AFFIRMATIVE DEFENSE

63. For a first and separate affirmative defense to Complaint on file herein, and to each alleged cause of action set down therein, this answering Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL further allege that all of the Defendants' acts at the time and place alleged were committed in good faith and without malice.

SECOND AFFIRMATIVE DEFENSE

64. For a second and separate affirmative defense to the Complaint on file herein, and to each alleged cause of action set down therein, this answering Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL are not responsible for the acts or omissions, DOE Defendants 1-10, or any of them.

THIRD AFFIRMATIVE DEFENSE

65. For a third and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, if Plaintiff suffered or sustained any injury, damage, or detriment from the injuries alleged in the Complaint, the same was caused and contributed to by the negligence of Plaintiff in that at the time and place alleged, Plaintiff failed to exercise that degree of care and caution which an ordinarily prudent person would exercise under the same or

similar circumstances, which negligence bars the claim of Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

66. For an fourth and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, that the injuries and damages, if any, were solely caused and contributed to by the negligence and carelessness of the Plaintiff who failed to exercise ordinary care and caution for their safety which an ordinarily prudent person would have exercised under the same or similar circumstances, thereby resulting in injuries, and said negligence and carelessness of the Plaintiff is by law imputed to Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

67. For an fifth and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, that the negligence alleged in the Complaint was not a substantial factor in bringing about the alleged injuries, and therefore was not a contributing cause, but was superseded by an event that was an independent, intervening and sole cause of any alleged injury or damage.

SIXTH AFFIRMATIVE DEFENSE

68. For a sixth and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, that the act or omission of any alleged party was not a substantial factor in bringing about the alleged injuries and, therefore, was not a contributing cause thereof, but was superseded by the acts or omissions of a third party, which were independent, intervening and sole causes of any injury or damage suffered.

SEVENTH AFFIRMATIVE DEFENSE

69. For a seventh and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, in the event these answering Defendants are found to be negligent (which supposition is denied and merely stated for the purpose of this affirmative defense), these Defendants may elect to introduce evidence of any amounts paid or payable, if any, as a benefit to Plaintiff pursuant to California Civil Code section 3333.1.

EIGHTH AFFIRMATIVE DEFENSE

70. For a eighth and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, in the event these answering Defendants should be found liable

to Plaintiff (which supposition is denied and merely stated for the purpose of this affirmative defense), the damages for non-economic losses shall not exceed the amount specified in California Civil Code section 3333.2.

NINTH AFFIRMATIVE DEFENSE

71. For a ninth and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, in the event these answering Defendants should be found to be liable to the Plaintiff (which supposition is denied and merely stated for the purpose of this affirmative defense), these Defendants may elect to have future damages, if in excess of the amounts specified in California Code of Civil Procedure section 667.7, paid in whole or in part, as specified in California Code of Civil Procedure section 667.7.

TENTH AFFIRMATIVE DEFENSE

72. For a tenth and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, that Plaintiff's action is barred by the applicable statute of limitations contained in Code of Civil Procedure sections 340 and 340.5.

ELEVENTH AFFIRMATIVE DEFENSE

73. For a eleventh and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, that Plaintiff's action is barred by operation of the Code of Civil Procedure section 340.5, requiring that the time for commencement of an action shall be three years after the date of injury or one year after the plaintiff's discovery, or through the use of reasonable diligence, should have discovered the injury, which ever occurs first.

TWELFTH AFFIRMATIVE DEFENSE

74. For an twelfth and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, that pursuant to the provisions of Civil Code Section 1714.8, no health care provider shall be liable for professional negligence or malpractice for any occurrence or result solely on the basis that the occurrence or result was caused by the natural course of a disease or condition, or was the natural or expected result of reasonable treatment rendered for the disease or condition.

THIRTEENTH AFFIRMATIVE DEFENSE

75. For a thirteenth and separate affirmative defense to the Complaint on file herein, and to

each cause of action set down therein, all risks, hazards and dangers, if any, inherent in the course of treatment and the administration of medications and of materials to the Plaintiff were fully known, appreciated and understood by the Plaintiff, who nevertheless freely and voluntarily elected to assume and undertake such hazards, risks and dangers, and thereby voluntarily assumed the risk of possible injury to the decedent, and therefore the Plaintiff is barred from any recovery by said assumption of risks.

FOURTEENTH AFFIRMATIVE DEFENSE

76. For a fourteenth and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, prior to treatment of the Plaintiff's condition by defendants, these defendants fully advised and disclosed to the plaintiff the treatment contemplated and the hazards and possible consequences incidental thereto. After said disclosure, the Plaintiff requested that said treatment be carried out and in so doing assumed all risks involved and exonerated defendants from any and all liability for damages which might result therefrom.

FIFTEENTH AFFIRMATIVE DEFENSE

77. For a fifteenth and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, that Plaintiff's action and each and every cause of action stated therein are barred by operation of Business & Professions Code section 2395.

SIXTEENTH AFFIRMATIVE DEFENSE

78. For a sixteenth and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, that plaintiff's action and each and every cause of action stated therein are barred by operation of Business & Professions Code section 2396.

SEVENTEENTH AFFIRMATIVE DEFENSE

79. For a seventeenth and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, that Plaintiff's action and each and every cause of action stated therein are barred by operation of Business & Professions Code section 2397.

EIGHTEENTH AFFIRMATIVE DEFENSE

80. For a eighteenth and separate affirmative defense to the Complaint on file herein, and to each cause of action set down therein, that plaintiff's action and each and every cause of action

stated therein are barred by operation of Health & Safety Code section 1317.

NINETEENTH AFFIRMATIVE DEFENSE

81. For a nineteenth and separate affirmative defense to the complaint on file herein, and to each cause of action set down therein, Pursuant ot NRS 41A.045, these answering defendants are only severally liable for any damage or injury to Plaintiff, if any.

TWENTIETH AFFIRMATIVE DEFENSE

82. For a twentieth and separate affirmative defense to the complaint on file herein, and to each cause of action set down therein, Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defense, Defendants reserve the right to seek leave of court to amend their answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

WHEREFORE, these answering Defendants pray that Plaintiff take nothing by reason of the Complaint on file herein; for costs of suit incurred herein; and for such other and further relief as the court may deem just and proper.

DATED: August ___, 2008

DUMMIT, BUCHHOLZ & TRAPP

By:______________________________

Kyle A. Cruse
Kyle.cruse@dbtlaw.org
Attorneys for Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL

DEMAND FOR JURY TRIAL

Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL hereby demand a jury trial is provided by Rule 38 of the Federal Rules of Civil Procedure.

DATED: August ___, 2008

DUMMIT, BUCHHOLZ & TRAPP

By:________________________________

Kyle A. Cruse
Kyle.cruse@dbtlaw.org
Attorneys for Defendants HEALTH CORPORATION OF AMERICA, INC. AND MOUNTAINVIEW HOSPITAL